TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL MEMORANDUM

HB 1121 – SB 1292

April 1, 2013

SUMMARY OF ORIGINAL BILL: Requires any public contract concerning durable medical equipment (DME) and related services to be open to any supplier of DME and related services that is licensed in this state, has a physical location that is licensed in this state, and is accredited and bonded as determined appropriate by the Commissioner of Finance and Administration if the supplier is willing to provide DME equipment and services at the published price. Prohibits any company or private entity that acts in management of a contract for DME and related services or which approves claims for such equipment and services from having any financial interest in any contracted supplier. Any public contract for the provision of DME and related services entered into or renewed after the effective date of the bill must contain a termination notice requirement of a minimum of 120 days advance written notice by certified mail. Any clean claim arising from the public contract must be paid within 60 days.

The Bureau of TennCare (the Bureau) is required to establish and publish an annual fee schedule for DME and related services in each region in which it provides services at the beginning of the fiscal year for that fiscal year. The state and the Bureau are prohibited from excluding any DME supplier who chooses to accept the published fee schedule or rates. Recipients of medical assistance and any providers of medical services to recipients of medical assistance must be permitted to choose the DME supplier through which the recipient will receive DME and related services.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – Exceeds $7,737,500

Increase Federal Expenditures - $13,873,900

Increase Local Expenditures – Exceeds $25,400

SUMMARY OF AMENDMENT (005953): Deletes all language after the enacting clause. Requires any managed care organization (MCO) that contracts with the Bureau in order to provide medical assistance to subcontract with at least 25 DME companies in each grand division to which the contract applies. The Bureau is required to assign a prior performance value relative to DME when conducting the solicitation process, to include any response to a request for proposal submitted by an MCO for purposes of contracting with the Bureau to provide medical assistance.

The primary criteria used to determine the prior performance value will be the extent to which an MCO, in its past performance: included at least one DME company for every 4,000 TennCare

recipients receiving medical assistance through the MCO; increased the number of DME companies in the MCO's network to attain at least 25 companies, if the MCO did not subcontract with at least 25 DME companies; and made sufficient use of the MCO's network so that quality care was promoted through the use of a variety of DME companies. The ratio of DME companies to TennCare recipients will be calculated using the total number of companies in an MCO's network and the total number of recipients receiving medical assistance through the MCO for all contracts the MCO has with the Bureau statewide. This prior performance value requirement will not apply to any MCO that has not contracted with the Bureau to provide medical assistance prior to July 1, 2013.

The bill does not apply to contracts with the Bureau to provide medical assistance to recipients of TennCare Select.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increased State Expenditures – Not Significant

Increased Federal Expenditures – Not Significant

Other Fiscal Impact - The estimated fiscal impact in FY14-15 and subsequent years cannot be reasonably quantified due to a number of unknown factors that could impact the Bureau's contracting of medical services in future years.

Assumptions for the bill as amended:

- The bill only applies to MCOs contracting with the Bureau to provide medical assistance and only to future contracts that the Bureau may enter into with MCOs for these services.
- The Department of Commerce and Insurance, TennCare Oversight Division, will be responsible for regulating the provisions of the bill which will include monitoring DME claims processing to ensure that the MCOs comply with the requirements of the bill. Any increased expenditures can be accommodated within the existing resources of the Department without an increased appropriation or reduced reversion.
- Currently, the Bureau contracts with three MCOs to provide medical assistance in the state.
- Based on information from the Bureau, two of the three current MCO contractors meet all requirements of the proposed legislation, including the minimum number of DME services companies and the ratio of companies to recipients.
- According to the Bureau, requiring participating MCOs to contract with a specific number of DME suppliers could impact the TennCare program's expenditures by impacting the payment rates.
- It is estimated that there will be more than a sufficient number of DME companies available to contract with an MCO in compliance with the bill based on the current ratios of providers to recipients in the majority of current MCO contracts with the Bureau.

- It is estimated that the bill will limit the number of DME providers with which the MCOs are required to contract and that the system will not be a pure "any willing provider" system.
- The effective date of the bill states that it will apply to contracts entered into or renewed pursuant to a request for proposal issued by the Bureau on or after July 1, 2013. Although contracts between managed care organizations and the Bureau are amended throughout the year, it is assumed that the bill will apply to contracts for which the Bureau has issued a request for proposal and not to existing contracts that are amended.
- According to the Bureau, requests for proposals will be issued for FY14-15. It is estimated that any fiscal impact of the bill will be experienced by the state in the second half of FY14-15 and subsequent years for contracts entered into or renewed on or after July 1, 2013.
- If the current MCOs respond to future requests for proposals, then the MCOs will have to maintain a DME network of at least 25 companies and the Bureau will have to consider the MCO's prior DME network to recipient ratio during the process to award the contract.
- Based on the majority of current MCOs meeting the requirements of the bill, it is assumed that DME payment rates will not be significantly affected in future years.
- The fiscal impact of the proposed legislation would be incurred in FY14-15 and subsequent years if current MCOs respond to future requests for proposals and if the cost responses by the current MCOs are different than what they would have been as a direct result of the requirement for the MCO to have a network of at least 25 DME providers.
- A number of factors will go into the decision of an MCO to bid for the TennCare medical assistance contracts as well as TennCare's decision as to which MCO to award the contracts to in future years.
- There could be savings that will not be realized in the future based on the minimum number of DME providers that will be required in MCO contracts that in turn could result in increased expenditures for the TennCare program from the reduced negotiating power that an MCO might experience under the provisions of the bill.
- This potential forgone savings or potential increase in state expenditures in FY14-15 and subsequent years cannot be quantified due to the many unknown factors including the number of DME companies that will be available to contract and the business models of the MCOs seeking to contract with the Bureau in the future.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Lucian D. Geise, Executive Director

/ehu